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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~1287~~ 842

EX PARTE: IN THE MATTER OF SOON HING, PETITIONER.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED APRIL 26, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Petition.*

In the Circuit Court of the District of California.

In the Matter of the Application of SOON HING for a Writ of Habeas Corpus.

To the hon. the judges of the circuit court of the district of California and the said circuit court,

The petition of Soon Hing respectfully shows:

That he is unlawfully imprisoned, detained, confined, and restrained of his liberty by Patrick Crowley, chief of police of the city and county of San Francisco, at the city prison, in said city and county and State aforesaid.

That the said imprisonment, detention, confinement, and restraint, are illegal, and that the illegality thereof consists in this, to wit:

That on the 18th day of June, A. D. 1883, the board of supervisors of the city and county of San Francisco passed an ordinance,
2 which ordinance is known as order No. 1719 of the general orders of the board of supervisors of said city and county, and is entitled "Order No. 1719, regulating the establishment and maintainance of public laundries and public wash-houses within certain limits in the city and county of San Francisco," and that said ordinance was approved by Washington Bartlett, mayor of said city and county, and *ex-officio* president of the board of supervisors of said city and county, on June 25th, 1883; said ordinance is in the words and figures following, to wit:

"Order No. 1719, regulating the establishment and maintenance of public laundries and public wash-houses within certain limits of the city and county of San Francisco.

"Whereas the indiscriminate establishment of public laundries and public wash-houses, where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well-being and comfort of the
3 community, and depreciates the value of property in those neighborhoods where such public laundries and such public wash-houses are situate:

"Under and in conformity to the authority vested by section 11 of article XI of the constitution of the State of California, and of subdivision 9 of section 7 of an act entitled 'An act to repeal the several charters of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof,' approved April 19, 1856, and the several acts amendatory thereto and supplementary thereof,

"The people of the city and county of San Francisco do ordain as follows:

"Section 1. On and after the passage of this order it shall be unlawful for any person or persons to establish, maintain, or carry on the business of a public laundry or a public wash-house,
4 where clothes or other articles are cleansed for hire, within

that portion of the city and county of San Francisco lying and being within the following boundaries: Commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement, without having first complied with the conditions hereinafter specified.

"Sec. 2. It shall be unlawful for any person or persons to conduct or maintain a public laundry or wash-house within the district named in section 1 of this order without having first obtained a certificate, signed by the health officer of the city and county
5 of San Francisco, that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of section 4 of order No. 1666 of this board have been complied with; also, a certificate, signed by the board of fire wardens of the city and county of San Francisco, that the stoves, washing and drying apparatus, and the appliances for heating smoothing-irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of order No. 1617, defining the fire limits of the city and county of San Francisco; and making regulations concerning the erection and use of buildings in said city and county, and of order No. 1670, 'prohibiting the kindling, maintenance, and use of open fires in houses.'

"Sec. 3. It shall be the duty of the health officer, also of the
6 board of fire wardens, respectively, upon application from any person or persons proposing to open or conduct the business of a public laundry within that portion of this city and county designated and described in section 1 of this order, to inspect the premises in which it is proposed to carry on said business, or in which said business is being carried on, with a view to ascertaining whether the said premises are provided with proper drainage and sanitary appliance, also whether the provisions of orders Nos. 1617 and 1670 of this board have been complied with, and, if found in all respects satisfactory, then to issue to said applicants the certificates provided for in section 2 of this order.

"No charge whatever shall be made, or compensation or fee collected or received, for the performance of any of the services required by the provisions of this order, in the inspection of premises or the issuance of a certificate, but all such services shall be
7 performed free of charge.

"Sec. 4. No person or persons, owning, or employed in the public laundries or public wash-houses, provided for in section 1 of this order, shall wash or iron clothes between the hours of 10

o'clock p. m. and 6 o'clock a. m., nor upon any portion of that day known as Sunday.

"Sec. 5. No person or persons engaged in the laundry business within that portion of this city, described in section 1 of this order, shall permit any person suffering from any infectious or contagious disease to lodge, sleep, or remain within or upon the premises used by him, her, or them, for the purposes of a public laundry.

"Sec. 6. Any person or persons establishing, maintaining, or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in section 1 of this order, without first having complied with the provisions of
8 section 2 of this order, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment of more than six months, or by both, and any person who shall violate the provisions of section 4 or 5 of this order shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five dollars, nor more than fifty dollars, or by imprisonment not more than one month, or by both such fine and imprisonment.

"Sec. 7. The certificates from the health officer, and the board of fire wardens, as required by section 2 of this order, shall be exhibited in some conspicuous place on the premises, and the same shall be produced on the demand of any officer of the city and county of of San Francisco.

"Sec. 8. The police authorities are hereby directed to have the provisions of this order strictly enforced.

9 "Sec. 9. Order No. 1691 and all orders of parts of orders in conflict with any of the provisions of this order are hereby repealed.

"In board of supervisors, San Francisco, June 18, 1883.

"After having been published five successive days, according to law, taken up and passed by the following vote:

"Ayes—Supervisors Sullivan, Reichenbach, Shirley, Burton, Smith, Pond, Griffin, Strother, Lewis, Ranken, Ashworth.

"Absent—Supervisor James.

"JNO. A. RUSSELL, *Clerk.*

"Approved, San Francisco, June 25, 1883.

"WASHINGTON BARTLETT,

"*Mayor and ex-officio President Board of Supervisors.*"

That on the 26th day of February, A. D. 1884, a complaint was filed in the police judge's court of the city and county of San Francisco, charging petitioner with a violation of section four of said ordinance, which complaint was sworn to by one James Gal-
10 braith before the Hon. H. Watson Webb, judge of the police judge's court of the city and county of San Francisco, and is in the words and figures following, to wit:

In Police Judge's Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA *against* SOON HING.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Now comes James Galbraith, who, being duly sworn, deposes and says: That about the hour of 11 o'clock p. m., on the 25 day of February, 1884, at No. 1417 Jackson street, between Hyde street and Larkin street, in the city and county of San Francisco, State of California, one Soon Hing did wilfully and unlawfully wash and iron clothes in a certain public laundry and public wash-house, where clothes were then and there cleansed for hire, the said Soon
11 Hing being then and there a person employed in said laundry and wash-house. Said time being between the hours of 10 o'clock p. m. of the 25th day of February, 1884, and 6 o'clock a. m. of the next day, and said place being within the following boundaries; Commencing at the intersection of Devisadero street with the waters of the Bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street, in a westerly direction, to Potrero avenue; thence southerly along Potrero avenue to Army street; thence westerly along Army street to Dolores street; thence northerly along Dolores street to and across Market street to Ridley street; thence westerly along Ridley street to Devisadero street; and thence northerly along Devisadero street to the bay and point of commencement.

Thereby violating the provisions of section 4, order 1719
12 of the board of supervisors of the city and county of San Francisco, as amended by order No. 1746 of said board, contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

And this complainant prays that the said accused may be brought before a magistrate, and dealt with according to law.

James Galbraith; res. and place of bus., 1109 Folsom.

Subscribed and sworn to before me, this 26 day of February, A. D. 1884.

H. WATSON WEBB,
Judge of the Police Judge's Court of the City and County of San Francisco.

(Endorsed:) Filed in the police judge's court of the city and county of San Francisco, this 26 day of February, 1884. H. Cook, clerk.

13 That upon said complaint a warrant was issued by the said judge, and said warrant was served, and the said Soon Hing was thereafter taken into custody.

And petitioner alleges that for several years last past he has been engaged in working for hire in a public laundry in the city and

county of San Francisco, and has in all respects complied with the laws of the United States, of the State of California, and the ordinances of the city and county of San Francisco, except as hereinbefore stated.

Petitioner further shows that the business of carrying on a laundry is a lawful business, wherein a large number of the subjects of the Emperor of China have been and are engaged in the said city and county of San Francisco; and the majority of the subjects of said Emperor of China carrying on said business in the said
14 city and county of San Francisco carry on the same within the limits of that portion thereof hereinbefore particularly described, that is to say, according to the information and belief of petitioner, there are about 250 Chinese laundries within that portion of said city and county described in section one of said ordinance, and there are about 25 carried on in said city and county without said particularly described portion of said city and county of San Francisco.

There is now, and has been for several years last past, great antipathy and hatred on the part of the residents of said city and county of San Francisco and the citizens and tax-payers thereof against the subjects of the Emperor of China residing and doing business in said city and county of San Francisco. That such antipathy and hatred has manifested itself in various ways and under various forms, for the purpose and with the intent of expelling and
15 compelling the subjects of said Emperor of China to quit and abandon doing business, or remaining in said city and county of San Francisco, or in the State of California, or in the United States of America.

That owing to the aforesaid feeling of antipathy and hatred prevailing against the said subjects of the Emperor of China, and not otherwise, and not for any sanitary, police, or other legitimate purpose, but for the purpose and with the intent of forcing said subjects of the Emperor of China engaged in carrying on the business of a laundry in the said city and county of San Francisco to abandon the exercise of their lawful vocation, and their only means of earning a livelihood, the said board of supervisors did enact and pass the ordinance hereinabove first set forth.

That said board of supervisors, at the time of the passage of said ordinance, well knew that the great bulk of the subjects of
16 said Emperor of China engaged in carrying on the business of a laundry within the said city and county of San Francisco were situate within that portion of the limits thereof in said ordinance particularly specified.

That said ordinance was enacted, framed, and adopted, not from any legitimate police regulation or sanitary purpose, but for the purpose and with the intent of oppressing the Chinese engaged in the laundry business.

That petitioner has been and is earning his living exclusively by working at washing and ironing for hire in a laundry, and in order to gain a livelihood is obliged to work late in the night, and has no

other lawful vocation or pursuit to earn his living except such business.

That on the 1st day of January, A. D. 1884, petitioner's employer paid to the license collector of the city and county of San Francisco the sum of six dollars, being the amount required by the ordi-
17 nance of the city and county of San Francisco, to procure the issuance of a license to carry on the business of a laundry, and thereupon said license collector issued to said employer a license authorizing, permitting, and allowing him to carry on and conduct the business of a public laundry at 1417 Jackson street, said place being within the district described in section one of said ordinance.

And petitioner avers that said section four of said order No. 1719 of said board of supervisors, hereinbefore first set forth, is null and void, and in contravention of the provisions of the Burlingame treaty, entered into between the Emperor of China and the Government of the United States, on February 5th, A. D. 1870, (16 U. S. Statutes at Large, p. 740) and in contravention of the provisions of Article 14 of the Amendments to the Constitution of the United States, wherein it is provided:

"Nor shall any State deprive any person of life, liberty,
18 or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," and in contravention of the statutes of the United States.

Wherefore petitioner prays that a writ of habeas corpus, issued herein in the manner and form prescribed by law in such cases.

his
SOON x HING, *Petitioner.*
mark

Witness: F. E. STRANAHAN.

THOS. D. RIORDAN,
Att'y for Pet'n'r.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Soon Hing, being duly sworn, deposes and says: That he is the petitioner in the foregoing petition named; that he has heard read said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

his
SOON x HING.
mark

19 Witness: F. E. STRANAHAN.

Subscribed and sworn to before me, this 3d day of March, A. D. 1884.

SAM'L S. MURFEY,
Notary Public.

(Endorsed:) Filed April 7, 1884. L. S. B. Sawyer, clerk.

20 *Certificate of Opposition of Opinion.*

At a stated term, to wit, the February term, A. D. 1884, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 7th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge; The Honorable George M. Sabin, district judge of the district of Nevada, sitting in said circuit court by order of the circuit judge, in pursuance of the statute in such case made and provided.

In the Matter of the Application of SOON HING for a Writ of Habeas Corpus.

In this case petitioner having filed his petition for a writ of habeas corpus, and having this day moved this court in open
21 court that a writ of habeas corpus issue as prayed for in said petition, and said motion having been heard upon said petition and duly considered, and the opinion of the judges in respect to the questions arising on said motion, and each of them, being opposed, and the circuit judge being of opinion that section four of said ordinance was valid and that said writ ought not issue, it was thereupon ordered that said motion be denied, which said order was thereupon duly and regularly entered on the minutes of said court.

Said petition and order are hereby made a part of this certificate and ordered to be certified by the clerk and annexed to this certificate as a part thereof and a part of the record of this case on certificate of opposition of opinion.

At the hearing of said motion there occurred as questions
22 arising on said petition and application for a writ of habeas corpus:

1. Whether section four of the ordinance, set out in the petition, is void, on the ground that it is not within the police power of the board of supervisors of the city and county of San Francisco.

2. Whether said section is void, on the ground that it discriminates between those engaged in the laundry business and those engaged in other classes of business.

3. Whether said section is void, on the ground that it discriminates between the different classes of persons engaged in the laundry business.

4. Whether said section is void, on the ground that it deprives a man of the right to labor at all times.

5. Whether said section is void, on the ground that it is un-
23 reasonable in its requirements, in restraint of trade, or upon any other ground, apparent upon the face of the ordinance, or appearing in the petition.

Upon which several questions, and upon each of them, the opinions of the judges were opposed.

Whereupon, on motion of Thomas D. Riordan, Esq., on behalf of petitioner, that the several points on which the disagreement has happened may, during the term, be stated upon the direction of the